



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0059]

RIN 1625-AA00

Safety Zone; Big Bay Boom, San Diego Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish four temporary safety zones upon the navigable waters of San Diego Bay for the Port of San Diego Big Bay Boom Fireworks display from 8:45 p.m. to 10 p.m. on July 4, 2013. These proposed safety zones are necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these temporary safety zones during, immediately before and after the fireworks event unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION

IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant John Bannon, Chief of Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278-7261, e-mail John.E.Bannon@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

#### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0059] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0059) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a

Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is proposing four temporary safety zones on the navigable waters of the San Diego Bay for the Port of San Diego Big Bay Boom Independence Day Fireworks Display. The safety zones will include all navigable waters within 1,000 feet of each tug and barge. The tugs and barges will be located in the following approximate positions:

Shelter Island Barge: 32°42.8' N, 117°13.2' W

Harbor Island Barge: 32°43.3' N, 117°12.0' W

Embarcadero Barge: 32°42.9' N, 117°10.8' W

Seaport Village Barge: 32°42.2' N, 117°10.0' W

These temporary safety zones are necessary to provide for the safety of the fireworks barge crew and participating safety vessels, recreational boating spectators, and other users of the

waterway from hazards associated with fireworks. Fireworks launched in close proximity to watercraft pose a significant risk to public safety and property. Such displays draw large numbers of spectators on vessels. The combination of a large number of spectators, congested waterways, darkness punctuated by bright flashes of light and burning debris has the potential to result in serious injuries or fatalities. The proposed safety zones will restrict vessels from operating within a portion of the navigable waters around the fireworks launch platforms during the enforcement period which will be immediately before, during, and immediately after the fireworks displays.

#### C. Discussion of Proposed Rule

The Coast Guard proposes to establish temporary safety zones that would be enforced from 8:45 p.m. until 10 p.m. on July 4, 2013. These proposed safety zones are necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The proposed temporary safety zones would include a portion of waters in the San Diego Bay. Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zones. Immediately before and during the fireworks display, Coast Guard Sector San Diego Joint

Harbor Operations Center will issues Broadcast Notice to Mariners on the location and enforcement of the safety zones.

Vessels will be able to transit the surrounding area and may be authorized to transit through the proposed safety zones with the permission of the Captain of the Port or the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zones. The safety zones are relatively small in size, less than half a mile across, and short

in duration, 75 minutes long. Although the safety zones would apply to multiple parts of San Diego Bay, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portions of San Diego Bay, CA from 8:45 p.m. to 10 p.m. on July 4, 2013.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones are relatively small in size, less than half a mile across, and short in duration, 75 minutes long. Although the safety zone would apply to multiple safety zones around the bay, traffic would be allowed to pass through the zones with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a Local Notice to Mariners.

If you think that your business, organization, or



governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities

among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-563 to read as follows:

§ 165.T11-563 Safety zone; Big Bay Boom; San Diego, CA.

(a) Location. This rule establishes four temporary safety zones, encompassing all navigable waters of San Diego Bay within a 1000-foot radius of fireworks launching points:

Shelter Island Barge: 32°42.8' N, 117°13.2' W

Harbor Island Barge: 32°43.3' N, 117°12.0' W

Embarcadero Barge: 32°42.9' N, 117°10.8' W

Seaport Village Barge: 32°42.2' N, 117°10.0' W

(b) Enforcement period. This section will be enforced from 8:45 p.m. to 10 p.m. on July 4, 2013. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination

time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) Definitions. The following definition applies to this section: designated representative means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) Regulations. (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners can request permission to transit through the safety zone from the Patrol Commander. The Patrol Commander can be contacted on VHF-FM channels 16 and 23.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the

operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 2, 2013

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S.M. Mahoney

Captain, U.S. Coast Guard

Captain of the Port San Diego.

[FR Doc. 2013-11751 Filed 05/17/2013 at 8:45 am; Publication  
Date: 05/20/2013]